IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

FRIDAY, THE TWENTY EIGHT DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA
* * *

WRIT PETITION No.19816 of 2007

Between:

M/s. Rohini Teja Indane Gas Distributors,
76-3-11/14, Near Prakashnagar Park,
Gandhipuram-II, Rajahmundry,
East Godavari district,
Represented by its Proprietor,
Smt. Mamidi Prasanthi **… Petitioner**

Versus

The Collector [Civil Supplies]
East Godavari District at Kakinada **… Respondent**

Counsel for the Petitioners: **Sri N.Siva Reddy**

Counsel for the Respondents: **GP for Civil Supplies**

O R D E R :

Heard Sri N. Siva Reddy, the counsel representing the writ

petitioner and the learned Government Pleader for Civil Supplies.

2. The writ petition is filed for a writ of mandamus to declare the action of the respondent in seizing the cylinders and regulators from the petitioner's premises pursuant to the case under Section 6-A of the Essential Commodities Act on 12-9-2007 as illegal, arbitrary and without jurisdiction and consequently to direct the respondent to release the seized stock of cylinders and regulators forthwith in favour of the petitioner so as to enable the petitioner to carry on its business and to pass such other suitable orders as this Court may deem fit and proper in the interest of justice.

3. It is stated in the affidavit filed in support of the writ petition that the writ petitioner is a proprietary concern engaged in the business of distribution of LPG cylinders of Indane Gas at Rajahmundry belonging to the Indian Oil Corporation Limited. The petitioner was granted distributorship of Indane Gas in the year 2000 and since then the petitioner had been distributing the LPG cylinders to the consumers of Rajahmundry and other places in East Godavari district without any complaint. It is stated that the petitioner obtained 'B' form licence under the AP Petroleum Products Order 1980 from the respondent and the same is subsisting as on date.

4. It is stated that while that being so, that the Grain Purchasing Officer, Rajahmundry along with other officials and staff inspected the

gas godown of the petitioner on 12-9-2007 and verified the physical stock of cylinders both full and empty in the presence of mediators. Thereafter, the Inspecting officials for the purpose of verifying the office records of the petitioner came along with mediators to the office premises of the petitioner and verified the stock register and other documents. During the course of inspection, the authorities found that the stock particulars on the notice board were not changed from 6-9-2007 onwards and further found seven empty cylinders in the office. When they enquired about the reason for keeping the said cylinders in the office premises, the petitioner informed them that they are the cylinders surrendered by the consumers who left Rajahmundry to some other place on transfer. Thereafter, the authorities verified the delivery bills of the gas cylinders and questioned about the reason for booking backlog of 1400 as per the computer statistics. The petitioner informed them that the Indian Oil Corporation is supplying only 15 loads as against the requirement of 30 loads for month and as such the petitioner had been distributing to the consumers on first come first serve basis. It is stated that the inspecting officials compared the physical stock with that of the ground stock of LPG cylinders both full and empty and found a deficit of 18 domestic and 36 commercial cylinders and 192 empty domestic cylinders and 14 excess empty

commercial cylinders. When the inspecting authorities asked the petitioner about the reason for the said variation in the stock, the petitioner explained that 162 empty cylinders were stored at a shop taken on lease in Subba Rao Nagar nearly four days back, as the road leading to the present godown was under repair as the drainage canal was dug abutting the road and as such the lorries are not going to the godown. The petitioner had shown the photographs of the said drainage dug by the Municipal Corporation and informed them that on 9-9-2007 the full cylinders load was stored in the temporary godown and from there onwards the petitioner had been distributing the cylinders. The petitioner further informed them that if the stock at Subbarao Nagar temporary godown is taken into account, there will not be any variation and requested them to include the stock stored at Subbarao Nagar Godown. But the inspecting officials refused to do so and prepared a panchanama showing that there are variations in the stock and violations of the Control Order and thereby registered a case under Section 6-A of the Essential Commodities Act.

5. It is also further stated that the Inspecting officials under the cover of panchanama seized the following stocks:

i)	Domestic Full Cylinders	..	16
ii)	Domestic Empty Cylinders	..	322
iii)	Commercial Full Cylinders	..	75
iv)	Domestic Empty Cylinders	..	14
v)	Other Company Domestic		

Cylinders .. 13

vi) Other Company Commercial Cylinders .. 14

vii) Regulators .. 2 (in good condition)

viii) Regulators .. 56 (under repair)

It is stated that in the panchanama, the cost of the cylinders was also included along with the cost of the gas therein. As a result of that the value of the seized stock is shown as Rs.4,70,142-00. In fact, the Commissioner of Civil Supplies issued a Circular in CCS.Cir.Ref.No.E1/841/88, dated 05-4-1990 addressing to all the District Collectors stating that the State Level Co-ordinator and the Representatives of the Oil Companies represented to the petitioner that the cylinders of the LPG distributors belong to Oil Companies and not to the dealers and requested that the empty cylinders seized should be returned to the Oil Companies concerned and the Collectors should insist on payment of actual cost of gas only in respect of filled cylinders and the cost of the cylinders (both for empty and full cylinders), the bank guarantee should not be insisted upon. It is stated that the seized cylinders are to be returned to the Oil Company, as they are the property of the company and the petitioner had to account for the stock received from them. It is stated that the petitioner requested the respondent to release the seized stock but no orders have been passed on that representation.

6. It is stated that the seized stock had been handed over to the neighbouring dealer. It appears that the said GPO had submitted a report to the respondent and basing on the same, the petitioner yet to receive the notice under section 6-B of the Essential Commodities Act, 1955. The petitioner is having fair chances of success in the proceedings under Section 6-A of the Essential Commodities Act before the respondent. The petitioner's 'B' form licence issued under the provisions of AP Petroleum Products (LRS) Order, 1980 is subsisting as on date. The authorities are mechanically registering the cases for statistical purposes. In identical case, this Court in WP.No.9554 of 2000 directed the respondents to release the seized stock on furnishing bank guarantee to the total cost of the gas contained in the cylinders. The business of the petitioner came to a grinding halt. In such circumstances, the writ petitioner approached this court by way of filing the present writ petition praying for the appropriate reliefs specified supra.

7. In the counter-affidavit filed by the respondent, it is pleaded that during routine inspection, it is found that the domestic LPG cylinders are being diverted to commercial purposes in Rajahmundry, Task Force Teams have been constituted on 10-9-2007 in order to check the diversion of domestic LPG cylinders for commercial purposes.

These teams are authorized to seizure and file 6-A cases, if any violations are detected. During the course of inspection on 11-9-2007 the Task Force Team lead by the Grain Purchasing Assistant (Dy.Tahsildar) Rajahmundry went to Subbarao nagar in quarry area of Rajahmundry and gathered information that one Sri Mahmad Shabeer is regularly procuring LPG cylinder are stored inside the premises, the Task Force Team searched for owner of the premises. It is noticed that Sri Mohamd Shabbeer, who is suspected to be involved in purchase and sales of LPG cylinders, is in possession of keys of the godown, the Grain Purchasing Assistant summoned him to the godown point.

8. It is pleaded that the GPA asked him to open the godown. Accordingly, he opened the godown and to the surprise of the Task Force Team there was huge stocks of empty cylinders stored in the godown, unauthorisedly. Thereupon, the Task Force Team arranged counting of the cylinders before the mediators. A total of (162) empty cylinders pertains to the company of IOC were available. When the Inspection team questioned Sri Mohammed Shabbeer, where from these cylinders were procured, he confessed that these cylinders belong to M/s. Rohini Teja Indane Gas Distributor, an LC (IOC) of Rajahmundry. A statement was recorded from Sri Mohamd Shabbeer by the Inspecting officers. As the empty cylinders were stored unauthorisedly in an unauthorized place, the available (162) empty

cylinders were seized and handed over to M/s Sri Prasad Gas Company, HPC, LPG distributor, Rajahmundry for safe custody and for further investigation. The Grain Purchasing Assistant along with the Team members about 5:00 p.m. inspected the office premises of M/s. Rohini Teja Agencies on 1-9-2007 and taken possession of all the records for verification. At the time of inspection Smt. M.Prasanthi owner of the gas agency was also available. To get the stock positions verified with book balances, the Task Force Team have inspected the godown premises along with the mediators. A statement was recorded from the owner of Rohini Teja Agencies at 9:30 p.m. with the assistance of torch lights as there was no electricity facility in the godown at , the Grain Purchasing Assistant (Dy.Tahsildar) sealed the godown at 9:30 p.m. in the presence of Smt.M.Prasanthi of M/s. Rohini Teja Gas Agencies, Rajahmundry, as it was not comfortable to count the stocks.

9. It is further pleaded that on 12-9-2007 the Dy.Manager (LPG S) IOC also joined the inspection team and participated in the entire inspection proceedings. The GPA has informed to the Dy.Manager of IOC about the proceedings of inspections made by them on 11-9-2007. The team has proceeded to godown point on 12-9-2007 at 11:00 a.m. along with the mediators. To their surprise the team found (143)

cylinders in the open premises of the godown which were not there on the previous night and when asked, the petitioner confessed that these cylinders were brought by the delivery boys from the customers. Thereafter, the inspecting officers have opened the seals of the godown in the presence of mediators and also the gas dealer. The Dy.Manager (LPG – S) IOC had personally counted the LPG cylinders stocks available in the godown. The stocks position is as detailed hereunder:

Details of cylinders	Full	Empty
1. Domestic cylinders (IOC)	16 Nos.	209 Nos.
2. Commercial cylinders (IOC)	75 Nos.	1 No.
3. Other Company Cylinders		
a) HPC		1 No.(14.2 Kgs)
b) BPC		2 Nos.

It is further pleaded that three empty cylinders pertain to other companies like HPC and BPC were found in the godown. The Task Force Team counted the empty cylinders lying in the open space in front of the godown. The following empty cylinders were available:

	Domestic	Commercial
1. IOC	106 Nos.	13 Nos.
2. BPC	8 Nos.	1 No.

3. HPC	2 Nos.	13 Nos.
Total	116 Nos.	27 Nos.

The Deputy Manager (LPC-S) IOC and the Team members of the strong opinion that these empty cylinders were procured from different sources in order to account for the stocks. This opinion is confirmed as (24) cylinders found to be procured pertain to the company of BPC and HPC but the petitioners company is IOC. This would go to show that the petitioner is in a panic situation and in hurried way procured these cylinders, irrespective of the company, which they belong too. Thereupon, the inspection team went to the office premises of M/s. Rohini Teja Indane Gas Distributor situated at Prakash nagar, Gandhipuram Rajahmundry along with the mediators. During the course of inspection, the following violations were noticed.

(a) The stock and price board was written upto 06-9-207 (inspection was conducted on 12-9-2007)

(b) Empty cylinders (7) Nos. were found lying in the office.

When asked for the above violations, the petitioner did not give convincing reply and stated that the empty cylinders were surrendered by the customers but the petitioner did not furnish recorded evidence to this effect. As seen from the TV voucher register, only (4) cylinders found to be surrendered. The following are the voucher numbers:

Sl. No.	Voucher No.	Consumer No. and date	No. of cylinders
1.	257888	11192, dt.5-9-2007	1 cylinder
2.	257889	4976, dt. 6-9-2007	1 cylinder
3.	257890	15707 dt. 6-9-2007	2 cylinders
		Total:	4 cylinders

As seen from the stock register, the following variations were found:

Sl. No.	Details of cylinders	Stock as per stock Register		Ground stock available		variation	
		Domestic Cylinders (14.2 Kg)	Commer-cial Cylinders (19 Kg)	Domestic cylinders (14.2 Kg)	Commer-cial Cylinders (19 Kg)	Domestic cylinders (14.2 kg)	Commer-cial cylinders (19 kg)
	IOC						
1.	Full	34	111	16	75	(-) 18	(-) 36
2.	Empty	514	--	209	1	(-) 303	(+) 1
	Other Company						
1.	HPC	--	--	1	--	(+) 1	--
2.	BPC	--	--	2	--	(+) 2	--

The Grain Purchasing Assistant asked the petitioner about the shortage of (321) Domestic cylinders and (36j) commercial cylinders, the petitioner replied that (162) empty cylinders which were stored in

an unauthorized godown at Burma Colony, Subbarao Nagar, belongs to her company and for the remaining shortfall of c6ylinders, the petitioner did not give convincing reply. The Task Force Team did not take into account (162) empty cylinders of M/s. Rohini Teja Indane Gas Distribhutor, as they are stored in an unauthorized place under the custody of a black marketer by name Sri Mohamd Shabbeer. This person was involved in a separate case, as he was in unauthorized possession of (38) cylinders of different companies, in his residential house unauthorisedly, which are intended for black marketeering and 6-A case was also booked against him. As seen from the computerized list of refill booking the inspecting officers have noticed that in many cases the priority list of the customers had not been maintained. The customers who have booked earlier were not given priority in delivery LPG, instead the customers who have booked later were delivered LPG on priority. When the Officers questioned about the improper maintenance of priority list, the petitioner did not give any convincing reply. A printout of computerized priority list was taken out and a random check of the list reveals discrepancies in delivery of cylinders to the customers. In view of the above violations, a show cause notice was issued vide Ref.V12/CS/694/2007, dated 18-9-2007 framing the charges against M/s. Rohini Teja Indane Gas Distributor,

Rajahmundry for violation of the conditions of the license issued under AP Petroleum Products (Licensing and Regulation of Supplies) Order, 1980. The licence bearing NO. 11/2002 issued to the petitioner is also kept under suspension vide Proceedings Ref.V12/CS/694/2007, dated 19-9-2007 under the provisions of Clause 28 (2) of the AP Petroleum Products (Licensing and Regulation of Supplies) Order, 1980.

10. It was further pleaded as regard the averments made at para no.4 of the affidavit, it is stated that inspection team went to office premises of M/S. Rohini Teja Indane Gas Distributor situated at Praqkash nagar, Gandhipuram, Rajahmundry along with the mediators. During the course of inspection the following violations were noticed.

(a) The stock and price board was written upto 06-9-207 (inspection was conducted on 12-9-2007)

(b) Empty cylinders (7) Nos. were found lying in the office.

When asked for the above violations, the petitioner did not give convincing reply and stated that the 7 empty cylinders were surrendered by the customers but the petitioner did not furnish recorded evidence to this effect. As seen from the TV voucher register, only (4) cylinders found to be surrendered. The following are the voucher numbers:

Sl. No.	Voucher No.	Consumer No. and date	No. of cylinders
1.	257888	11192, dt.5-9-2007	1 cylinder
2.	257889	4976, dt. 6-9-2007	1 cylinder
3.	257890	15707 dt. 6-9-2007	2 cylinders
		Total:	4 cylinders

As seen from the stock register, the following variations were found:

Sl. No.	Details of cylinders	Stock as per stock Register		Ground stock available		variation	
		Domestic Cylinders (14.2 Kg)	Commer-cial Cylinders (19 Kg)	Domestic cylinders (14.2 Kg)	Commer-cial Cylinders (19 Kg)	Domestic cylinders (14.2 kg)	Commer-cial cylinders (19 kg)
	IOC						
1.	Full	34	111	16	75	(-) 18	(-) 36
2.	Empty	514	--	209	1	(-) 303	(+) 1
	Other Company						
1.	HPC	--	--	1	--	(+) 1	--
2.	BPC	--	--	2	--	(+) 2	--

It is strange to notice that three empty cylinders pertain to other companies like HPC and BPC were found in the godown. The Task Force Team counted the empty cylinders lying in the open space in

front of the godown. The following empty cylinders were available:

	Domestic	Commercial
1. IOC	106 Nos.	13 Nos.
2. BPC	8 Nos.	1 No.
3. HPC	2 Nos.	13 Nos.
Total	116 Nos.	27 Nos.

The Deputy Manager (LPC-S) IOC and the Team members of the strong opinion that these empty cylinders were procured from different sources in order to account for the stocks. This opinion is confirmed as (24) cylinders found to be procured pertain to the company of BPC and HPC but the petitioners company is IOC. This would go to show that the petitioner is in a panic situation and in hurried way procured these cylinders, irrespective of the company, which they belong too. Therefore, these cylinders were not taken into account to the godown stock as they are illegally procured and were not available on the day of inspection i.e., 11-9-2007.

11. The Grain Purchasing Assistant had asked the petitioner about the shortage of (321) Domestic cylinders and (36) commercial cylinders, the petitioner has replied that (162) empty cylinders which were stored in an unauthorized godown at Burma Colony, Subbarao Nagar, belongs to her company and for the remaining shortfall of cylinders, the petitioner did not give convincing reply.

It is further pleaded that due to the drainage repairs to the road leading to the authorized godown the lorries are not going to the godown, the same is not a fact. In fact at the time of inspection of the godown it was found that (228) domestic cylinders and (76) commercial cylinders are in the godown and delivery of full cylinders are also being issued from this godown. Therefore, the argument of the petitioner that due to repairs to the road, the petitioner had taken another godown unauthorisedly on lease and stored (162) empty cylinders without permission of the competent authority is unjustifiable. Due to this reason, (162) empty cylinders stored in an unauthorized godown was not taken into account of the petitioner's stock position by the inspection team. According to information gathered orally from the officials of the IOC company, the petitioner is habituated not to file the demand drafts well in advance to get the LPG cylinder loads regularly and therefore, the backlog waiting list of the customers was being accumulated as much as (1400) customers on the date of inspection. The petitioner stated that the LPG cylinders are being distributed to the consumers on first come first serve basis. But it is not a fact. As seen from the computerized list of LPG refill booking, the Inspecting Officers have noticed that in many cases the priority list of the customers had not been maintained. The customers who have booked earlier were

not given priority in delivering LPG instead the customers who have booked later were delivered LPG on priority. A random check of computerized priority list reveals discrepancies and number of days taken for delivery of cylinders to the consumers.

12. In response to allegations at para 5 of the affidavit filed in support of the writ petition, it was pleaded that the following cylinders were seized and kept under safe custody of another LPG dealer of Rajahmundry

Empty domestic and non-domestic cylinders	525
Full domestic and non-domestic cylinders	91
Total	616

Regulators – sound	2 Nos.
Regulators – defective	56 Nos.

The total value of the seized property is Rs.6,23,732/-

It is a fact that the seized cylinders are the property of Oil Companies. The petitioner never represented for release of stocks on bank guarantee. The petitioner is answerable to the IOC company and also for the violations committed and for the entire stock seized by the Grain Purchasing Assistant (Dy.Tahsildar) Rajahmundry. At present, the petitioner's LPG dealership license is under suspension and cannot claim the seized property.

13. In reply to averments at para no.6 of the affidavit filed in support

of the writ petition, it is pleaded that a show cause notice is issued to the petitioner U/s 6 (B) of Essential Commodities Act, 1955 vide Ref.V12/CS/694/2007, dated 18-9-2007 and this notice could not be served to the petitioner directly, as the whereabouts of the petitioner is not known. Therefore, the Grain Purchasing Assistant, Rajahmundry had served the notice to the petitioner by affixing in the Office show room by conducting panchanama on 19-9-2007. The Form-B license bearing No 11/2002 was kept under suspension under the provisions of clause 28 (2) of AP Petroleum Products (Licensing and Regulation of Supplies) Order, 1980. As the license issued to the petitioner was kept under suspension, the petitioner cannot commence the business transactions, until and unless reply to the show cause notice issued on 18-9-2007 is submitted before the competent authority and 6-A case is finalized. The respondent authorities are authorized to inspect the premises of the petitioner and in view of the contraventions found the authorities are empowered to register a case under the provisions of Essential Commodities Act and clause 32 of AP Petroleum Products (Licensing and Regulation of Supplies) Order 1980. Accordingly, the action of the respondent in seizure of the cylinders and regulators is within the competence of the authorities. In the circumstances relied upon by the petitioner does not help him, since the seized property

would be handed over to concerned Oil Company by the authorities and the same cannot be released to the petitioner.

14. In such circumstances, specific stand had been taken that since the seized property would be handed over to the concerned company authorities, the same cannot be released to the petitioner. In the light of the respective stands taken by the partners, it is needless to say that enquiry to be further proceeded with. However, in the light of the respective stands taken by the parties, the respondent is at liberty to hand over the seized property to the concerned Oil Company in accordance with law.

15. Accordingly, the writ petition is disposed of at the stage of admission. No costs.

JUSTICE P . S . NARAYANA .

28/09/2007

ISL

NB CC on priority basis.

B/o. ISL.